

Aged, Blind and Disabled Manual	Section: Institutional Medicaid
Policy Manual Number: 125.010	Chapter: Transfer of Assets and Penalty Periods

## TRANSFER OF ASSETS AND PENALTY PERIODS

**Legal Authority:** Social Security Act § 1917(c); 42 USC 1396p; State Medicaid Manual § 3257

### 1. Transfer of Assets for Less than Fair Market Value (FMV)

#### a. Policy Statement

The uncompensated value of a transferred asset is considered available and countable for the purpose of determining eligibility for TennCare Medicaid Long-Term Services & Supports (LTSS) payments. The uncompensated value of a transferred asset is the equity value minus the amount received by the individual. An otherwise eligible Medicaid applicant or recipient is ineligible for payment of LTSS payments (nursing facility or Home and Community Based Services (HCBS)) for a period directly related to the uncompensated value of an asset transferred for less than Fair Market Value (FMV).

Only the uncompensated value of an asset transferred on or after an individual's look-back date is considered available and countable for the purpose of determining eligibility for TennCare Medicaid LTSS payments.

#### b. Definitions

<b>Asset</b>	Asset refers to the value of the resource involved in the transfer, e.g., cash, bank accounts, bonds, real estate, etc. As of 8/11/1993, asset also refers to the value of the income, as well as the resource, of the total uncompensated value transferred.
<b>Equity Value</b>	The price that an item can reasonably be expected to sell for on the open market in a particular geographic area minus any encumbrances.
<b>FMV</b>	The price that an item can reasonably be expected to sell for on the open market in a particular geographic area at a given time.
<b>Legal Representative</b>	A guardian conservator or one who has the individual's power of attorney. Effective 10/1/1993 for transfers occurring on or after 8/11/1993, legal representative includes any court or administrative body or any person acting on behalf or at the request or direction of the institutionalized individual or his spouse.
<b>Sole Benefit of a Transfer</b>	A transfer of assets for the sole benefit of a spouse, blind or disabled child, or disabled individual is a transfer that is arranged in such a way that no other individual or entity may benefit from the assets transferred at the time of the transfer or at any time in the future.
<b>Transfer</b>	Transfer means the sale, exchange, donation or divestiture of a liquid or non-liquid asset including the exchange of an asset for one of less value, e.g., transfer of real property in exchange for a life estate in the property.
<b>Uncompensated</b>	The uncompensated value of an asset is the difference between the

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<b>Value</b>	individual's equity in the asset at the time of transfer and the compensation he received in the transaction.
<b>Institutionalized Individual</b>	An institutionalized individual, for application of transfer of assets policy, includes the institutionalized individual, the institutionalized individual's spouse, legal representative (including a court or administrative body), or any person acting at the request of or direction of the institutionalized individual or the institutionalized individual's spouse.

### c. Types of Transfers

In addition to giving away or selling property for less than FMV, the actions listed below may be considered uncompensated transfers of assets:

- i. Altering or establishing joint accounts in which the individual gives up or limits his rights or access to or interest in the asset;
- ii. Establishing an irrevocable trust;
- iii. Purchasing an annuity that does not satisfy the Deficit Reduction Act (DRA) of 2005 requirements or making a change to an annuity that alters the course of payments or the treatment of the income or principal;
- iv. Waiving entitled income or benefits;
- v. Waiving or giving up an inheritance;
- vi. Refusal to take legal action to obtain child support or alimony that is not being paid; or
- vii. Purchasing an irrevocable burial trust that exceeds the value of merchandise and services.

### d. Look-Back Period and Look-Back Date

The look-back period is sixty (60) months for all resource transfers made on or after 2/8/2006. An individual's look-back period is established on the first date the individual has applied for TennCare Medicaid and:

- i. Is institutionalized; or
- ii. Is determined to have met the requirements for home and community-based services.

When an individual is already enrolled in TennCare Medicaid and becomes institutionalized, the individual's look-back period is established on the first date of institutionalization.

The look-back date is the beginning of the look-back period and the earliest date on which a transfer of assets made for less than FMV can impact an individual's eligibility for LTSS. Once the look-back date is established for an individual, the look-back date does not change, regardless of multiple applications or multiple periods of eligibility. All transfers of assets made on or after the look-back date must be evaluated.

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*Example 1: Ms. Merriweather is institutionalized on January 3, 2017. She applies for Medicaid on February 8, 2017, but is denied. She reapplies for Medicaid on April 24, 2017. The look-back date is 60 months prior to the first date the individual met both requirements (i.e., institutionalization and application for Medicaid). Thus, the look-back date is February 8, 2012.*

*Example 2: Mr. Armstrong applies for Medicaid on August 8, 2016 and is approved. Mr. Armstrong becomes institutionalized on June 11, 2017. The look-back date is 60 months prior to the first date the individual met both requirements (i.e., institutionalization and application for Medicaid). Thus, the look-back date is June 11, 2012.*

#### **e. Effective Date Real Property is Evaluated as a Transfer of Assets**

The effective date of the transfer of real property is the date the deed is registered with the Register of Deeds.

*Example: Mrs. Jones quitclaims her homestead to her two sons on 10/15/2010. The deed is signed that day in the presence of a notary. The deed is not registered until 7/1/2012. TennCare must use the date the deed is registered as the effective date of the asset transfer.*

In the Tennessee Attorney General Opinion 04-161, “failure to register a deed of conveyance for real property meant that such transfer has not occurred and that the property is still owned by the seller”. Therefore, if the property has not been registered with the Register of Deeds office, it is still owned by its original owner.

The Eligibility Specialist may need to contact the Register of Deeds office for the county where the land is located to determine if a reported transfer of real property has been recorded. The Eligibility Specialist may also check how the deed is registered at the Tennessee Property Data home page at [https://www.assessment.cot.tn.gov/RE\\_Assessment/](https://www.assessment.cot.tn.gov/RE_Assessment/). This proof will determine when or if ownership status of the real property changed.

#### **f. Determining Whether a Transfer Occurred**

##### **i. Jointly Held Assets**

Creation or alterations of jointly held assets which reduce or eliminate an asset for the institutionalized individual are transfers for less than FMV.

##### **1. Transfers Involving Jointly Held Assets**

Examples of transfers for less than FMV include:

- a.** An individual is added to an “and” account and the new owner refuses to sign for a withdrawal of funds; or

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- b. Removal of an institutionalized individual's name from an account that he previously co-owned; or
- c. Addition of a joint owner who removes funds from the account for uses not allowed by policy (i.e., not for the sole benefit of a spouse or blind or disabled child).

## **2. Evaluation of Evidence**

To determine whether a transfer took place under these conditions, evaluate the evidence and ask these questions:

- a. How long has the asset been jointly owned?
- b. Who contributed the largest share to purchase the asset?
- c. Why did the joint owner transfer the asset or remove funds?

Document the case notes with information pertinent to the determination of whether the action constituted a transfer of assets.

## **ii. Transfer Executed by a Financially Responsible Relative (FRR) or Others**

Effective 10/1/1993, transfers made 8/11/1993 or later by the institutionalized individual, the community spouse or legal representative including a court or administrative body at the request, direction or on behalf of the institutionalized individual or community spouse may result in a penalty for the institutionalized individual.

## **iii. Asset Exchange versus Asset Conversion**

### **1. Exchange**

The exchange of one asset for another is not a transfer provided the individual received FMV for the exchanged item. The exchange of a countable asset for one which is excluded is not a transfer of assets for less than FMV as long as the individual remains the owner.

*Example: An individual exchanges \$1000 cash surrender value of life insurance for an irrevocable burial arrangement of the same value. This is not a transfer of assets for less than FMV.*

### **2. Conversion**

The conversion of one asset for another is not a transfer of assets for less than FMV provided the individual receives FMV in the exchange, e.g. the individual uses \$1500 cash to purchase an automobile valued at \$1500.

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#### **g. Exempt Asset Transfers**

Transfers of assets made under the following circumstances are not considered as transfers of assets for less than FMV:

- i.** The asset was transferred to the individual's spouse or to another for the sole benefit of the individual's spouse prior to establishment of Institutional Medicaid eligibility.
- ii.** The asset was transferred from the institutionalized or HCBS spouse to a community spouse during the 12-month transfer period after approval of TennCare Medicaid and was part of the Community Spouse Resource Maintenance Allowance (CSRMA). See the [Resource Assessment](#) policy.
- iii.** The asset was transferred to, or to a trust for the sole benefit of, the individual's minor or adult child who is blind or disabled according to 42 USC 1382c.
- iv.** The asset was transferred to a trust established for the sole benefit of an individual under age 65 who is disabled according to 42 USC 1382c. See the [ABD Trusts](#) policy. Contact the Policy Unit regarding assets transferred into a pooled trust for individuals age 65 and over.
- v.** The asset transferred is the individual's home and title to the home was transferred to:
  - 1.** The spouse of the owner;
  - 2.** A child of the owner who is under age 21;
  - 3.** The owner's adult child who is blind or disabled according to 42 USC 1382c;
  - 4.** A sibling of the owner who has equity interest in and has resided in the home for at least one year prior to the individual's institutionalization; or
  - 5.** A child of the owner, regardless of age, who:
    - a.** Resided with the individual for two years immediately prior to the individual's nursing home admission; and
    - b.** Provided care which permitted the individual to reside at home.
- vi.** The asset was transferred exclusively for a purpose other than qualifying for TennCare Medicaid, such as satisfaction of legally enforceable debts.

Note: The timing of payment of debts should be considered. For example, if a family member suddenly remembers or decides to collect on an alleged debt that has purportedly been outstanding for years, and no convincing evidence exists that either the individual affirmatively acknowledged the debt or worked toward satisfying the debt and the individual to whom the debt was owed made previous efforts to collect the debt, the validity of the debt and whether it is legally enforceable may be questionable.

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## **h. Annuities**

### **i. Overview**

Although usually purchased in order to establish a source of income for retirement, annuities may be used to shelter assets so that the individual purchasing them may become eligible for Medicaid. The DRA of 2005 added new requirements with respect to the disclosure and treatment of annuities for Medicaid. Individuals applying for long-term services and supports must:

1. Disclose any interest the individual or spouse has in an annuity (see the [ABD Countable and Excluded Resources](#) policy);
2. Name the State of Tennessee as a remainder beneficiary under any annuity purchased on or after February 8, 2006; and
3. Demonstrate that the purchase of any annuity and any annuity-related transaction made by the individual or spouse on or after February 8, 2006 was not a transfer of assets for less than fair market value.

### **ii. Requirement to Name the State as a Remainder Beneficiary**

LTSS applicants and spouses must designate the State of Tennessee as the primary beneficiary of any death benefit payable under any annuity purchased on or after February 8, 2006. If the individual has a community spouse, or a minor or disabled child, the State may be named in the second position following one of these individuals. If the State is named in the second position following a community spouse or child, the annuity must also provide that the State becomes the remainder beneficiary in the first position if the community spouse, the child, or their representative disposes of any of the remainder of the annuity for less than fair market value.

As a remainder beneficiary, the State may receive the total amount of medical assistance paid for long-term care on the individual's behalf. The State will notify the issuer of the annuity of the State's right as the preferred remainder beneficiary. The issuer must notify the State if there are any changes in the amount of income or principal being withdrawn.

Any annuity purchased by an individual or community spouse on or after the individual's look-back date that is not amended to meet these criteria should be treated as a transfer of assets for less than FMV. If an annuity does not have a death benefit or does not allow someone other than a surviving spouse to be named as a beneficiary, verification from the annuity issuer is required.

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### **iii. Annuity Purchases**

The purchase of an annuity on or after February 8, 2006 by or on behalf of an institutionalized individual who has applied for LTSS should be treated as a transfer of assets for less than fair market value, when it occurs on or after the individual's look-back date, unless the annuity:

**1. Is considered either:**

- a.** An individual retirement annuity (Section 408(b) of the Internal Revenue Code of 1986 (IRC)); or
- b.** A deemed Individual Retirement Account (IRA) under a qualified employer plan (Section 408(q) of the IRC).

OR

**2. Is purchased with the proceeds from one of the following:**

- a.** A traditional IRA (Section 408(a) of the IRC);
- b.** Certain accounts or trusts which are treated as traditional IRAs (Section 408(c) of the IRC);
- c.** A simple retirement account (Section 408(p) of the IRC);
- d.** A simplified employee pension (Section 408(k) of the IRC); or
- e.** A Roth IRA (Section 408A of the IRC).

OR

**3. Meets all of the following requirements:**

- a.** Is irrevocable;
- b.** Is non-assignable;
- c.** Is actuarially sound; and
- d.** Provides for payments in equal amounts during the term of the annuity, with no deferral or balloon payments.

Note: The above criteria should not be applied to annuities that are purchased with the applicant's or couple's assets that are held by the community spouse, annuities that are purchased entirely with the assets of someone other than the applicant or spouse, and annuities that are determined to be available to the applicant as a resource (see the [ABD Countable and Excluded Resources](#) policy).

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#### **4. Determining Whether an Annuity is Actuarially Sound**

An annuity is actuarially sound when the expected return on the annuity will be paid within the actual or expected lifetime of the annuitant.

To determine whether an annuity is actuarially sound, multiply the annual amount scheduled to be paid out by the period of the annuity. If the period of the annuity is based on the annuitant's lifetime, the annual payments are multiplied by the individual's life expectancy at the time of annuitization, see *SSA Period Life Table* <http://www.ssa.gov/oact/STATS/table4c6.html>. If the annuity is a period certain annuity, annual payments are multiplied by the annuitant's life expectancy or the period certain, whichever is less. The calculated amount is the amount the annuity is expected to pay out during the individual's lifetime. If this amount is equal to or greater than the cash value of the annuity on the date it was annuitized, the annuity is actuarially sound.

When the cash value of the annuity on the date it was annuitized is greater than the amount that is expected to be paid out during the individual's lifetime, the difference between the two is an uncompensated transfer of assets.

#### **iv. Annuity Transactions**

Since annuities owned by an applicant must be considered in determining the state's obligation towards the cost of long-term care and/or the applicant's eligibility for TennCare Medicaid, certain annuity transactions made on or after February 8, 2006 by an applicant, or by someone acting on his behalf, on or after the look-back date, can be considered asset transfers made for less than FMV. Transactions include any action taken that changes the course of payments to be made by an annuity or the treatment of the income or principal of an annuity.

Annuity transactions include, but are not limited to:

1. Adding unscheduled contributions to an annuity;
2. Making elective withdrawals from an annuity;
3. Assigning an annuity or payments in whole or in part to another person or entity;
4. Annuitizing the contract;
5. Changing the beneficiary of an annuity, in such a way that the annuity no longer names the state in the proper position; and
6. Changing the annuitant or distribution from an annuity, in such a way that the annuity no longer pays out the full value of the annuity to the applicant in equal amounts during the applicant's lifetime.

*Example: Mr. Greenfield discloses at application that he has assigned annuity payments to an irrevocable trust, from which no payments can be made to or for his own benefit. Since*



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*the transaction occurred on or after the look-back date and the transfer is not exempt under transfer of assets rules, the annuity transaction is a transfer of assets for less than FMV.*

Annuity transactions made by a community spouse prior to the establishment of Institutional Medicaid eligibility may also be evaluated as improper transfers. Routine changes (e.g., change of address, notification of the death or divorce of a remainder beneficiary) and changes beyond the individual's control are not considered transfers of assets for less than FMV.

**v. Annuity is a Transfer of Assets for Less than FMV**

If an annuity purchase or transaction is determined to be an uncompensated transfer of assets, a penalty period will be applied. The amount used to calculate the penalty period is the full purchase price of the annuity, with two exceptions. When an annuity is determined to not be actuarially sound, the penalty period is determined using the difference between the cash value of the annuity on the date it was annuitized and the amount the annuity is expected to pay out during the individual's lifetime. If an annuity transaction is determined to be a transfer of assets for less than FMV, the penalty period is determined using the difference between the transaction amount and any compensation received.

**i. Excluded Resources Requiring Transfer Information**

Transfers of the following excluded resources must be evaluated in order to determine that adequate compensation was received. The initial exclusion of these resources was based on their intended use, and a transfer may void the exclusion:

- i.** Burial space excluded based on its intended use; and
- ii.** Real property excluded as property essential to self-support or as a homestead.

**j. Transfer Executed by an Individual's Legal Representative**

A transfer of assets for less than FMV made by any of the following people or entities will result in a penalty period for the institutionalized individual:

- i.** A person, court, or administrative body with legal authority to act on behalf of or in place of the individual and/or her spouse; or
- ii.** A person, court or administrative body acting at the direction of or request of the individual and/or her spouse.

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## **k. Compensation**

### **i. Determining Compensation**

To determine whether the individual received fair compensation for the transferred asset, subtract the amount the individual received in the transaction from the FMV of the asset, as follows:

*FMV – Compensation Received = Compensated Value (Round the result to the nearest whole dollar)*

If the individual alleges that part or all of his compensation is in-kind, attach a dollar value to the support and/or maintenance and subtract that value from the FMV as shown above. If the individual alleges he has an agreement for total support and care from the individual to whom he transferred the asset, determine the monthly amount of the support and care contribution. If the individual has transferred an asset in exchange for lifetime medical care, he may not be eligible for TennCare Medicaid benefits. See Section 1(n) Life Care Contracts.

### **ii. Fair Compensation**

An individual receives fair compensation for a transferred asset if the compensated value is equal to or greater than 100% of the FMV of the asset on the date of transfer or contract for sale. Compensation may be in cash or in-kind.

### **iii. In-Kind Compensation**

In-kind compensation is limited to agreements of support or maintenance. Compensation in the form of support or maintenance is acceptable if the individual can provide verification of the value of the in-kind compensation in written documentation form, including cancelled checks, receipts, etc.

A transfer of assets in exchange for total support and care requires a determination of the amount of the monthly support and care contribution provided by the individual to whom the asset was transferred.

### **iv. Unfair Compensation**

An asset is transferred for less than FMV if the compensated value received by the individual is less than the FMV of the asset on the date of transfer or contract for sale. If the asset was transferred for less than FMV, presume that the asset was transferred to establish eligibility for TennCare Medicaid benefits unless one of the following applies:

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1. The individual can rebut either of the transfer presumptions:
  - a. transfer to attain TennCare Medicaid eligibility, or
  - b. receipt of unfair compensation; or
2. The transfer was executed by the individual's legal representative, other than a spouse, without her knowledge or permission prior to 8/11/1993; or
3. Hardship is determined to exist for transfers of assets belonging to institutionalized individuals occurring 7/1/1988 or later.

The uncompensated value of the transferred asset is counted in determining the period of ineligibility for LTSS payments.

## **I. Rebuttal of the Transfer Presumption**

An individual may rebut one or both of the following presumptions regarding a transferred asset: the transfer was done to establish eligibility for TennCare Medicaid benefits; or the individual received inadequate compensation, i.e. less than FMV for the asset.

### **i. Rebuttal of the Transfer to Establish TennCare Medicaid Eligibility**

The individual has the right to rebut the presumption that an asset was transferred to establish TennCare Medicaid eligibility. He must present convincing evidence that the transfer was executed solely for some other purpose and that TennCare Medicaid eligibility was not a factor in his decision.

Request substantiating evidence and a written statement from the individual that includes the following:

1. The individual's reasons for transferring the asset;
2. The individual's attempts to dispose of the asset for its FMV; and
3. The individual's reasons for accepting less than the FMV in the exchange.

The Eligibility Specialist will document the individual's cooperation in providing needed information regarding the transfer immediately.

### **ii. Rebuttal of the Inadequate Compensation Determination**

The individual can rebut the determination that fair compensation was not received for the transferred asset.

Request a written statement from the individual that includes a description of attempts to dispose of the asset for its FMV and reasons for accepting less than the FMV.

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### **1. Written Statement**

Request that the individual provide written documentation from at least two knowledgeable sources familiar with the type of transferred asset, e.g. real estate agent that contains:

- a. The specific reason(s) the transferred resource could not be sold for its FMV; and
- b. A statement that indicates that the price the individual realized in the transaction was justified under the circumstances.

### **iii. Successful Rebuttal**

If the individual is successful in her rebuttal of either of the above assumptions, do not count any uncompensated asset value as an available asset in determining her eligibility. Document in the case notes a thorough explanation of the decision and the facts upon which it is based.

### **iv. Unsuccessful Rebuttal**

If the individual's rebuttal is unsuccessful, consider the uncompensated value of the transferred asset as an available asset in the eligibility determination.

### **1. Evaluation of Evidence**

Evaluate the individual's evidence carefully and consult a supervisor, keeping in mind the following consideration:

- a. Did the individual make an effort to obtain a fair price?
- b. Regarding the compensation received:
  - i. What percentage of the real value did the individual receive?
  - ii. Why did the individual accept less than FMV?
  - iii. Are the reasons the individual accepted less than FMV supported by factual evidence and was the individual's action justified?
  - iv. What was the timing of the transfer with the Medicaid application? Was it before the individual knew about TennCare Medicaid or the program's resource limitation, or did the transfer take place just before the individual applied or just after being advised of ineligibility due to excess resources? Were the assets unreported and later transferred after eligibility was established, based on erroneous information provided by the individual or responsible/legal representative?

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### **m. Hardship**

Hardship is considered to exist if the institutionalized individual has no available resources (other than the uncompensated value) in excess of the resource limit and application of the penalty would deprive the individual of medical care such that the individual's health or life would be endangered or of loss of food, clothing, shelter, or other necessities of life.

Note: If the community spouse has available assets, he is legally obligated for the support of his spouse; therefore, hardship does not exist.

Requests for hardship submitted to an ES are forwarded to the program manager. TennCare will determine whether hardship exists and notify the individual within thirty (30) days of receiving a request for hardship. A hardship denial may be appealed within forty (40) days. When needed, input from the Eligibility Policy Unit is requested by the program manager or director.

### **n. Life Care Contracts**

An individual who has transferred her available assets to a third party in exchange for full medical care for life is considered to have entered into a life care contract. Because the individual has a third party medical resource legally responsible for all her medical needs, these individuals are not eligible for TennCare Medicaid benefits. These provisions apply even if the full amount of the individual's assets have been spent by the third party for her care, unless the contract between the two parties is void or not enforceable for some reason.

If the individual entered into a contract of more limited scope, i.e., the terms of the contract specified certain medical care limitations, she may be eligible for benefits.

#### **i. Third Party Defined**

For purposes of this policy, third party includes any individual, institution, corporation, or public or private agency liable or potentially liable for all or part of an individual's medical costs.

#### **ii. Enforceable Contract**

An enforceable contract does not exist when its terms cannot be fulfilled and are void or rescinded. A contract is rescinded when the third party is financially unable to fulfill its contractual responsibilities. Under these circumstances, the third party is legally obligated to return to the individual any remaining assets from those originally assigned in the contract.

The individual may be eligible for TennCare Medicaid after requiring a financial accounting from the third party of the following:

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1. The full amount of income and resources originally assigned to the third party by the terms of the contract;
2. Total expenses paid and fees charged by the third party; and
3. The full amount of the refund.

The full amount of the refund is a countable asset.

### iii. Contractual Agreement Limited in Scope

The contractual agreement that is limited in scope, i.e. limited to basic room and board, or basic room and board and partial medical services, may not preclude TennCare Medicaid eligibility.

Determine the individual's eligibility and review his transfer of assets to the third party as described in the transfer of assets policy, Section 1 *Transfer of Assets for Less than Fair Market Value (FMV)* of this chapter.

If the individual is determined to be eligible, TennCare Medicaid reimbursement is available for those items encompassed within the State Plan that are not included in the life care contract. The individual must fax or mail a copy of the life care contract to the Third Party Liability Unit of the Bureau of TennCare, who will enter the resource in the database.

Bureau of TennCare  
Third Party Liability Unit  
310 Great Circle Road  
Nashville, TN 37243  
Fax Number: 615-253-5588

## 2. Penalty Periods For Assets Transferred for Less than FMV

### a. Policy Statement

An otherwise eligible TennCare Medicaid individual is ineligible for payment of TennCare Medicaid LTSS payments if a transfer of assets for less than FMV has occurred. Individuals in long term care facilities (LTCF) may be approved for TennCare Medicaid benefits in an Institutional Medicaid category (not LTSS payments), if otherwise eligible. HCBS applicants are not eligible for Institutional Medicaid, including demonstration equivalent categories such as 217-Like and the At-Risk Demonstration categories, during a penalty period. Institutional Medicaid eligibility for HCBS applicants is conditioned upon the actual receipt of HCBS services, which cannot commence until the applicant is able to enroll in the CHOICES program.

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**b. Calculating the Penalty Period for Assets Transferred on or after 2/8/2006**

The penalty period for NF and HCBS applicants is calculated in the same manner. To determine the penalty period, divide the uncompensated value of the asset(s) transferred by the average daily private pay rate for nursing facility care at the time of application for TennCare Medicaid or the date of transfer, whichever is later.

Note: In order to comply with the requirement that partial month penalties are assessed, TennCare Medicaid will use the average daily rate of nursing facility care to calculate the penalty period.

Average Cost of Nursing Facility Care		
Date	Daily Rate	Monthly Rate
6/1/2011 – 11/30/2012	\$152.23	\$4,567
12/1/12 – 2/28/2015	\$153.02	\$4,591
3/1/2015 – Present	\$182.42	\$5,472

The penalty period will determine the number of days in which the individual is ineligible for nursing facility services. Eligibility cannot begin until the full number of days has passed.

See Section 1.k.i. Determining Compensation.

*Example: Mr. Haywood transferred an asset in January 2015 with an uncompensated value of \$10,000. He applied for TennCare Medicaid on February 1, 2015. He is eligible for TennCare Medicaid, but for the transfer of asset for less than FMV. The individual has been in the nursing facility since February 1, 2015. The uncompensated value is divided by the average daily cost of nursing facility care to determine the penalty period:  $\$10,000 / 153.02 = 65.3$  days. Round down to the nearest whole number to determine the penalty period of 65 days.*

*The penalty period will begin on February 1, 2015, and will run for 65 days.*

**c. Penalty Periods for Assets Transferred On or After 2/8/2006**

**i. The DRA of 2005**

The DRA of 2005 made the following changes to asset transfers occurring on or after 2/8/2006:

1. The look-back period for all transferred assets is 60 months; and
2. For applicants, the penalty period begins on the date on which the individual is eligible for TennCare Medicaid and would otherwise be receiving institutional level of care services but for the application of the penalty period.

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## ii. **Penalty Period Start Date**

### 1. **Nursing Facility Individuals**

For Nursing Facility individuals the start date for the penalty period is the later of:

- a. The date the individual is eligible for Institutional Medicaid and would have been eligible for CHOICES if not for an improper transfer, or
- b. The first day of the month in which the assets were transferred.

### 2. **HCBS Individuals**

For HCBS individuals that would be eligible for CHOICES if not for an improper transfer, the start date for the penalty period is the later of:

- a. The date the individual would have been eligible for Institutional Medicaid (based on receipt of waived services, i.e., CHOICES) if not for an improper transfer, or
- b. The first day of the month in which the assets were transferred.

### 3. **Other Considerations**

The penalty period cannot begin until the expiration of any existing period of ineligibility. There is no limit on the maximum months of ineligibility. Once a penalty period begins, it will continue to run uninterrupted even if the individual subsequently stops receiving institutional level of care services.

Penalty periods for more than one transferred asset will run consecutively, not concurrently. Any uncompensated value from multiple transfers is added to the initial uncompensated value if penalty periods overlap to determine the consecutive penalty period.

When an enrollee is already receiving CHOICES, the individual is provided an advance notice before CHOICES benefits end.

*Example: Ms. Crabtree entered the nursing facility and was enrolled in CHOICES on June 30, 2016. On March 28, 2017, Ms. Crabtree reported that she transferred an asset on March 20, 2017 with an uncompensated value of \$7,000. She is eligible for TennCare Medicaid, but for the transfer of asset for less than FMV. The uncompensated value is divided by the average daily cost of nursing facility care to determine the penalty period:  $\$7,000/182.42 = 38.3$  days. The penalty period of 38 days cannot begin until after an advance notice of adverse action is provided. If action is taken timely on the case, the earliest possible effective date for denial of LTSS payments is May 1, 2017. The penalty period starts on May 1, 2017.*



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#### **d. Spousal Transfer Causes Penalty for Institutionalized Individual**

If a spousal transfer results in a penalty for the institutionalized individual and the spouse becomes institutionalized during the established penalty period, the remaining penalty months must be apportioned between both spouses.

*Example: Mrs. Carver enters a nursing home in 10/2007. A 60 month penalty beginning 10/2007 was assessed due to a transfer by Mr. Carver, the community spouse. In 8/2008, Mr. Carver goes into the nursing home and requests TennCare Medicaid beginning 8/2008 (the 11th month of the penalty period). In 8/2008, the remaining penalty period of 49 months is apportioned between both spouses, giving each a penalty period of 24.5 months or 745 days. During this penalty period, no nursing home payment is paid for either spouse.*

*If one spouse dies or is discharged from nursing care, the total remainder penalty period remaining for both spouses must be served by the spouse receiving nursing services.*

#### **e. Return of Transferred Asset**

If the entire transferred resource is returned, the period of ineligibility does not apply. To meet this exception, the individual must reacquire the same percentage of ownership interest in the resource that existed prior to the original transfer. If partial ownership of the transferred resource is returned, the period of ineligibility is adjusted based on the ownership interest not returned. Reacquiring physical possession of the resource is not sufficient to meet this exception; the individual must also reacquire legal ownership of the resource.

#### **f. Less Than the Entire Resource is Returned**

If the entire resource is not returned, the period of ineligibility does not end. Re-compute the uncompensated value based on the adjusted uncompensated value. If additional funds are subsequently returned, it will be necessary to re-compute the uncompensated value again.

Note: The return of the resource to the individual is not counted as income to the individual.

#### **g. Waiving of Entitled Income Benefits**

When a single lump sum of income is transferred for less than FMV, calculate the penalty based on the total lump sum divided by the average private pay nursing home charge. Apply a partial month penalty if the amount of the uncompensated value is less than the average monthly private pay nursing home charge.

If a stream of income (i.e., income paid on a regular basis such as a pension or other benefit) is transferred to another for less than FMV, determine the approximate value of the income to be received during the individual's life expectancy. Divide the anticipated total of transferred

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income by the average private pay nursing home charge to determine the penalty period beginning with the month of transfer.

*Example: Mrs. Dale, age 67, is entitled to a royalty payment of \$200 per month or \$2400 per year, but she has transferred that right to her nephew. At age 67, Mrs. Dale has a life expectancy (see SSA Period Life Table <http://www.ssa.gov/oact/STATS/table4c6.html> ) of 18.76 years  $\times$  \$2400 year = \$45,024. This uncompensated value divided by the average private pay nursing home charge equals the number of days of penalty.*

#### **h. Supplemental Security Income (SSI) Recipients (Effective 7/1/1988)**

If it is determined that an SSI recipient or her spouse's assets have been transferred for less than FMV, the SSI recipient must serve the penalty period associated with that transfer prior to receiving TennCare Medicaid payment of long-term services and supports.

#### **i. Notification**

Before taking any action on the application, i.e., approval, closure, continuation or rejection, contact the individual (by telephone contact or failing that, by mail) and give him the following information:

- i.** The decision regarding the transfer;
- ii.** Identification of the transferred asset;
- iii.** The amount of the uncompensated value;
- iv.** The impact on the individual's resource eligibility;
- v.** The length of the penalty period;
- vi.** The individual's rebuttal rights and those procedures.

Allow the individual 10 days to respond with an indication of his rebuttal intention. If he does not respond, take the appropriate action observing standard advance notification procedures. Document the contact in the case notes. If a penalty period is imposed on an individual, a notice of denial of LTSS payments is issued.

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11.01.2018	1.g.	Exempt Asset Transfers	5	Policy Clarification	AJ
11.01.2018	1.h.	Annuities	6-9	Policy Change	AJ
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